

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Electronically filed September 22, 2022

VIRGINIA MILTON and ARNOLD)	
MILTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 17-1235 L
)	
v.)	
)	Senior Judge Loren A. Smith
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

FORMERLY APPOINTED DOWNSTREAM COUNSEL’S STATUS REPORT

The Court conducted a status conference in this case on September 14, 2022 regarding the Downstream litigation. During the hearing the Court commented that the re-appointment of leadership for the Downstream litigation made sense due to the United States Court of Appeals for the Federal Circuit’s remand in *Milton v. United States*, No. 2021-1131.

The undersigned requested the opportunity to confer with all formerly appointed Downstream counsel about their willingness to be reappointed and to report back to the Court before an Order issued. The Court granted the request. To provide context for this report, a brief timeline of the pertinent Orders follows:

On December 5, 2017, the Court entered “Management Order No. 3 (Order Establishing Sub-Master Docket for Downstream Claims),” which cited and partially restated the Court’s November 20, 2017 Orders appointing Downstream leadership. *In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, (ECF No. 2) (Fed. Cl. Dec 5, 2017). Pursuant to the Orders, the following lawyers were appointed Downstream Plaintiffs’ leadership:

a. Rand P. Nolen and Derek H. Potts “Co-Lead Counsel for Downstream Plaintiffs as to Pre-Trial Discovery, Dispositive Motions for Partial or Summary Judgement and/or Cross-Motions and/or a Trial on Liability, and Scheduling.” *See In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, (ECF No. 69) (Fed. Cl. Nov. 20, 2017).

b. Richard Warren Mithoff “Co-Lead Counsel for Individual Downstream Plaintiffs as to Pre-Trial Discovery, Dispositive Motions for Partial or Summary Judgement and/or Cross-Motions and/or a Trial on Liability, and Scheduling.” *See In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, (ECF No. 69) (Fed. Cl. Nov. 20, 2017).

c. Jack E. McGehee “Of Counsel for Individual Downstream Plaintiffs as to Jurisdictional Discovery, the Government’s Motion to Dismiss, and Scheduling.” *See In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, (ECF No. 67) (Fed. Cl. Nov. 20, 2017).

d. Mr. William S. Consovoy and Mr. David C. Frederick, “Co-Lead Counsel; Co-Lead Counsel for Downstream Plaintiffs as to Jurisdictional Discovery, the Government’s Motion to Dismiss, and Scheduling.” *See In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, (ECF No. 67) (Fed. Cl. Nov. 20, 2017).

On February 18, 2020, the Court issued an Opinion and Order granting both Defendant’s Motion to Dismiss and Cross-Motion for Summary Judgment. *See In re Downstream Addicks and Barker (Texas) Flood-Control Reservoirs*, Docket No. 17-9002, (ECF No. 203) (Fed. Cl. Feb 18, 2020). On September 9, 2020, the Court entered “Order Rescinding Amended Management Order No. 3 As It Relates To Newly Filed Cases” and dissolved the downstream leadership structure. *See In re Downstream Addicks and Barker (Texas) Flood-Control Reservoirs*, Docket No. 17-9002 (ECF No. 236) (Fed. Cl. Sep 9, 2020).

The undersigned has conferred with all formerly appointed counsel and advises the Court that Rand P. Nolen, Richard Warren Mithoff, and Jack E. McGehee wish to serve and seek reappointment. Derek H. Potts, William S. Consovoy, and David C. Frederick advised that they do not wish to be reappointed.

Dated: September 22, 2022

Respectfully submitted,

/s/ Rand P. Nolen

Rand P. Nolen

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Certificate of Service

The undersigned attorney hereby certifies that a true and correct copy of the foregoing instrument was served on the following opposing counsel and to Plaintiffs' counsel of record as reflected in the ECF notifications in Docket No. 17-9002 via email on September 22, 2022.

/s/ Rand P. Nolen

Rand P. Nolen

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